

## Fair Political Practices Commission

**To:** Chairman Randolph; Commissioners Blair, Downey, Huguenin and Remy

**From:** Luisa Menchaca, General Counsel  
Lawrence T. Woodlock, Senior Commission Counsel

**Subject:** Pending Litigation

**Date:** May 31, 2005

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### 1. *California ProLife Council, Inc. v. Karen Getman et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts and later granted the FPPC's motion for summary judgment on the remaining counts. Plaintiff appealed, and the Ninth Circuit Court of Appeal affirmed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. However, the Ninth Circuit remanded the matter back to the district court to determine whether California could in fact establish an interest sufficient to support its committee disclosure rules, and that those disclosure rules are properly tailored to that interest. On February 22, 2005 the court granted defendants' motion for summary judgment on these questions. Plaintiff has again appealed, and the parties anticipate that the appeal will be heard and decided late this year.

### 2. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they could not be civilly prosecuted because of tribal sovereign immunity. On February 27, 2003 the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. Defendants filed a petition for writ of mandate in the Third District Court of Appeal, challenging the decision of the trial court. The petition was summarily denied on April 24, 2003, whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003, the Supreme Court granted review and transferred the case back to the Court of Appeal. On March 3, 2004, the Court of Appeal affirmed the Superior Court's decision, concluding that "the constitutional right of the State to

preserve its republican form of government trumps the common law doctrine of tribal immunity.” On April 13, 2004, defendants filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. On September 23, 2004, the defendants filed an opening brief with the Supreme Court. On December 30, 2004, the FPPC filed its opposition brief. On April 1, 2005, defendants filed a closing brief. Amicus briefs have been filed by a number of interested parties, and an extension was granted to respond to the amicus to both the appellants and respondents until July 7, 2005.

### *3. FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria*

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on October 7, 2002. On January 17, 2003, defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter was scheduled for oral argument. The Attorney General filed an amicus brief in support of the FPPC’s position. The court heard oral argument on October 19, 2004, and on October 27, 2004, issued a decision in favor of the Commission overturning the trial court’s granting of defendant’s motion to quash. The tribe filed a petition for review with California Supreme Court which was granted on January 12, 2005. However, any action on the case has been deferred pending the outcome of the Agua Caliente case.

### *4. FPPC v. American Civil Rights Coalition, et al.*

In this action the FPPC alleged that the American Civil Rights Coalition (“ACRC”) and its CEO Ward Connerly failed to file campaign statements reporting the source of almost \$2 million contributed to promote the passage of Proposition 54 on the October 7 ballot. On May 18, 2005, a stipulation for entry of judgment and a judgment against Ward Connerly and ACRC were signed by Judge Thomas M. Cecil in Department 54 of the Sacramento County Superior Court. Under the stipulated settlement, defendants are paying a total penalty of \$95,000. Concurrent with the filing of the stipulation and the judgment, defendants filed amended campaign statements disclosing the contributors to ACRC from January 1, 2002 through June 30, 2003.

### *5. California Republican Party, et al. v FPPC et al.*

On October 12, 2004 the California Republican Party, the California Democratic Party, and the Orange County Republican Party filed a Complaint in the Federal District Court for injunctive and declaratory relief from two provisions of the Act, sections 84503 and 84506, which require a committee paying for ballot measure advertisements to identify their two highest

contributors of \$50,000 or more. On October 20, 2004 plaintiffs amended their Complaint, and noticed a motion for Temporary Restraining Order to be heard on October 26, 2004. The FPPC filed its Opposition to this motion on October 22. The Attorney General's office represented the Commission at the hearing before the Honorable Frank C. Damrell, Jr. The next day, the Court issued a preliminary injunction enjoining the Commission from enforcing the provisions of the Act above against plaintiffs. Magistrate-Judge Peter Nowinski recently conducted two settlement conferences, on April 11 and May 2, 2005.

6. *Citizens to Save California, et al. v. FPPC*

On February 8, 2005, Citizens to Save California and Assembly Member Keith Richman filed a Complaint for injunctive and declaratory relief in Sacramento Superior Court challenging the Commission's adoption of regulation 18530.9 in June, 2005, which imposed on candidate-controlled ballot measure committees the contribution limit applied to the controlling candidate. Plaintiffs claim that the regulation violates the First Amendment, and that the Commission lacked statutory authority to adopt the regulation. An additional group of plaintiffs led by Governor Arnold Schwarzenegger then intervened in the action. The court granted plaintiffs' motion for a preliminary injunction, barring FPPC enforcement of regulation 18530.9 pending final disposition of the lawsuit. The Commission filed a Notice of Appeal upon receiving the order, noting that the superior court's injunction was stayed upon the filing of the Notice. On April 25, the Superior Court heard arguments this automatic stay. The court determined that the preliminary injunction remained in effect, and a writ petition challenging this finding in the Court of Appeal was denied. On May 26, in a ruling on the Commission's demurrer to the complaints, Judge Chang found that further action by the Superior Court matter was stayed pending resolution of the Commission's appeal of the preliminary injunction.

7. *FPPC v. Democratic National Committee, Non-federal-Corporate et al.*

In a lawsuit filed in the Sacramento Superior Court on February 25, 2005, the FPPC alleges that a California campaign committee sponsored by the national Democratic Party committee, and the treasurers of that committee, failed to file a campaign statement disclosing \$1.2 million in contributions to the California Democratic Party. Defendants filed its answer to the complaint, and a cross-complaint against the FPPC seeking declaratory and injunctive relief. The cross-complaint alleges that Government Code section 83115.5 requires the FPPC to hold a probable cause conference prior to instituting a civil enforcement action against a prospective defendant. The cross-complaint also alleges that FPPC regulation 18361.8, which defendants interpret as eliminating the procedures for bringing a civil action, violates a respondent's right to due process. On May 5, 2005, the Commission filed a demurrer to the cross-complaint, which is now scheduled to be heard on June 23, 2005.